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7 Attorneys for Plaintiff, Granite State Insurance Company

FILED

07 NOV -6 PM 3:57

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY:

PDC

DEPUTY

8 UNITED STATES DISTRICT COURT
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 '07 CV 2128 BEN (NLS)

11 GRANITE STATE INSURANCE
 12 COMPANY,

13 Plaintiff,

14 vs.

15 UNITED STATES OF AMERICA,

16 Defendant.

Case No.:

COMPLAINT FOR DAMAGES
 (Tort/Personal Injury—subrogation)

17 PLAINTIFF ALLEGES:

- 18 1. This action arises under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and
 19 2674, et seq.
- 20 2. Venue is proper in the Southern District of California because the tortious acts
 21 and/or omissions committed by the defendant and its agents that give rise to this
 22 action occurred in this District, specifically, Camp Pendleton, California.
- 23 3. The plaintiff, Granite State Insurance Company, is a corporation organized under
 24 the laws of the State of Pennsylvania, and duly authorized to conduct and transact
 25 business in the State of California. At all times mentioned in this complaint,
 26 plaintiff conducted and transacted workers' compensation insurance business in
 27 the State of California.
- 28 4. This action involves a workers' compensation subrogation claim by the plaintiff,

VIA FAX

1 under California Labor Code §§3850-3865.

- 2 5. The subject of this action is injured employee Mark Lemoge, who sustained
3 industrial (personal) injuries on or about April 17, 2004, while working in the
4 course and scope of his employment for Professional Software Engineering, which
5 was then insured against claims for workers' compensation by plaintiff. On or
6 about April 13, 2006, plaintiff submitted its claim to the defendant, United States
7 of American, Department of the Navy. As of March 29, 2007, the Department of
8 the Navy was still considering plaintiff's claim.
- 9 6. On or after May 8, 2007, the United States of America, Department of the Navy,
10 rejected plaintiff's claim. Accordingly, this Court has jurisdiction over plaintiff's
11 action.
- 12 7. While attending a work-related function at a park in Camp Pendleton, County of
13 San Diego, State of California, Mark Lemoge (Mr. Lemoge) sustained industrial
14 injuries when a concrete park bench collapsed and/or fell on Mr. Lemoge.
- 15 8. Based on information and belief, said park bench was negligently assembled,
16 constructed, placed, inspected, maintained, owned and in all respects controlled by
17 defendant and its agents, so that as a direct and proximate result Mr. Lemoge
18 sustained severe personal injuries, including injuries to his leg. As a further, direct,
19 sole and proximate result of said personal injuries, Mr. Lemoge reasonably
20 required medical attention and treatment, sustained loss of earnings and earning
21 capacity, suffered personal property losses, including the loss of his shoes and eye
22 glasses, and suffered other special and general damages in a sum estimated by
23 plaintiff to be \$100,000.
- 24 9. As a further, sole, direct and proximate result of the unlawful acts and omissions
25 of the defendant, as set forth above, and the resulting injuries and damages
26 sustained by employee Mark Lemoge, plaintiff sustained damage in the form of
27 liability for workers' compensation benefits, including liability for medical and
28 disability compensation, in a sum amounting to no less than \$20,616.53.

- 1 10. No act or omission attributable to plaintiff's insured employer, Professional
- 2 Software Engineering, constituted a proximate cause of the Mr. Lemoge's
- 3 accident, injuries or damages.
- 4 11. Pursuant to California Labor Code §§ 3850 through 3865, plaintiff is subrogated
- 5 to the rights of the employee, Mark Lemoge.

6 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 7 1. For monetary damages sufficient to fully and reasonably compensate both plaintiff
- 8 and said injured employee for all injuries and losses alleged herein, estimated to be \$120,616.53;
- 9 2. For reasonable attorney fees and other costs against any amount awarded to
- 10 compensate said injured employee's injuries and losses, as provided by Labor Code §§3850 –
- 11 3865;
- 12 3. For plaintiff's allowable costs of suit; and
- 13 4. For such other and further compensation and relief as the court may deem just and
- 14 proper.

15 Dated: November 5, 2007

ADELSON, TESTAN, BRUNDO &
JIMENEZ



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18 Davil Vasquez, Esq., attorneys for plaintiff, Granite
19 State Insurance Company

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GRANITE STATE INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Davil R. Vasquez, Esq., c/o Adelson, Testan, Bruno & Jimenez: 1851 E.
First Street, Suite 100, Santa Ana, CA 92705; 714/245-8888**DEFENDANTS**

UNITED STATES OF AMERICA

07 NOV -6 PM 4:00

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

07 CV 2128 BEN (NLS)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | |
| <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) | |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	Bankruptcy	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability	REAL PROPERTY	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 890 Other Summary Actions	
REAL PROPERTY	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	SOCIAL SECURITY	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/ Disabilities - Employment	<input type="checkbox"/> 861 HIA (1395d)	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/ Disabilities - Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 863 DIWC/DIWV (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes	
		<input type="checkbox"/> 864 SSID Title XVI		
		<input type="checkbox"/> 865 RSI (405(k))		
		FEDERAL TAX SUITS		
		<input type="checkbox"/> 870 Taxcs (U.S. Plaintiff or Defendant)		
		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Federal Tort Claims Act, 28 U.S.C. Sect. 2674

Brief description of cause:

Workers' compensation subrogation claim based on the negligence of the USA, Dept. of the Navy

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

120,616.53

CHECK YES only if demanded in complaint:

 Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Hon. Larry Alan Burns

DOCKET NUMBER 07CV0620 LAB AJB

DATE

11/05/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 14425 AMOUNT 350

APPLYING IFFP

JUDGE

MAG. JUDGE

11/6/07 m

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 144251 - SR
* * C O P Y * *
November 06, 2007
15:59:35**

Civ Fil Non-Pris
USAO #: 07CV2128 CIV. FIL.
Judge.: ROGER T BENITEZ
Amount.: \$350.00 CK
Check#: BC#5064

Total-> \$350.00

FROM: GRANITE STATE INSURANCE CO. V.
USA
CIVIL FILING